

## **Exhibit 3**

### **Plaintiff's Deposition Designations with Defendants' Objections and Counter-Designations**

**May 11, 2022 – Andrew Coppola:**

<b>Designation</b>	<b>XOOM's Objections</b>	<b>XOOM's Counterdesignations</b>	<b>Plaintiff's Objections / Further Designations for Completeness</b>	<b>XOOM Objections to Plaintiff's Counter-Counterdesignations</b>
30:22–31:2	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	31:3–32:1	None	
34:10–12	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	32:21–34:9 34:13–15	None None	
36:1–39:19	<b>Rule 401, Relevance</b> – unrelated to variable-rate setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading	39:21–40:19  41:1–4  41:22–43:25	None through 40:3 40:4–40:19: 402 (relevance); 403 (undue delay, wasting time)  402 (relevance – unrelated to rate setting); 403 (undue delay, wasting time); 602 (speculation)  402 (relevance – unrelated to XOOM); 403 (undue delay, wasting time)	
49:16–51:20	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	49:2–15 51:21–23 52:11–53:6	None None None	

		53:21–22	None	
51:24–52:10	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	51:21–23  52:11–53:6  53:21–22	None  None  None	
75:11–19	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	74:21–75:10  75:20–77:8	None  None for 76:10–77:8  75:20–76:9: 402 (relevance – unrelated to rate setting); 403 (undue delay, wasting time)	
77:22–79:21	<b>Rule 401, Relevance</b> – no bearing on claim at issue; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation</b>			
81:18–83:6	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	83:7 –84:5	None	
84:6–85:7	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	83:7 –84:5  85:8–86:18	None  402 (relevance – unrelated to NY rate setting); 403 (undue delay, wasting time); 602 (speculation)	
86:19–88:14	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	85:8–86:18	402 (relevance – unrelated to NY rate setting); 403 (undue	

		88:15–91:10	delay, wasting time); 602 (speculation)  403 (undue delay, wasting time)	
91:13-96:2	<b>Rule 401, Relevance</b> - unrelated to contract at issue; <b>Rule 403, Probative Value</b> - prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation;</b> XOOM also incorporates its objections to the underlying exhibit			
97:22–98:18	<b>Rule 401, Relevance</b> - unrelated to contract at issue; <b>Rule 403, Probative Value</b> - prejudicial, misleading			
107:6–108:1	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading			
125:4–17				
136:5–24	<b>Rule 401, Relevance</b> – answer to hypothetical question can have no relevance; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Foundation; Assumes Facts Not in Evidence</b>			
142:10–144:7	<b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule</b>			
147:1–148:9	<b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	148:10–150:13	None	
150:15–151:20	<b>Rule 403, Probative Value</b> – misleading, prejudicial; <b>Best Evidence Rule; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	148:10–150:13	None	
152:4-23				
157:2–14	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	154:18–157:1	154:5–17	

159:9–160:7	<b>Rule 401, Relevance</b> – Coppola’s guesses as to what Ryan Park thought or meant are not probative; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 403, Probative Value</b> – misleading, prejudicial; <b>Best Evidence Rule; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	160:8–25	161:1–162:21	<b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 403, Probative Value</b> – misleading, prejudicial;
162:4–21	<b>Rule 401, Relevance</b> – competitive intelligence not relevant to variable rate-setting; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 403, Probative Value</b> – misleading, prejudicial; <b>Best Evidence Rule</b>			
163:20–164:3	XOOM incorporates its objections to the underlying exhibit			
167:22–168:14	<b>Rule 401, Relevance</b> – ratio of variable-rate to fixed-rate customers not pertinent; <b>Rule 403, Probative Value</b> – misleading, prejudicial; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	166:14–167:21	None	
168:22–170:19	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	170:20–173:11	Unrelated to designation; 403 (wasting time, undue delay)	
175:7–24	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	169:4–173:11	Unrelated to designation; 403 (wasting time, undue delay)	
		175:25–177:25	Unrelated to designation; 403 (wasting time, undue delay)	

		198:9–200:15	Unrelated to designation; 403 (wasting time, undue delay; misleading the jury); 602 (speculation)	
178:1–8	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	175:25–177:25	Unrelated to designation; 403 (wasting time, undue delay)	
189:20–190:1	XOOM incorporates its objections to the underlying exhibit			
191:25–195:10	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule</b>			
198:4–8	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	198:9–200:15	403 (wasting time, undue delay; misleading the jury); 602 (speculation); NR	
202:21–203:1	<b>Relevance</b> –unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	203:19–204:16	Unrelated to designation; 403 (wasting time, undue delay)	
215:24–216:11	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context; <b>Best Evidence Rule</b>	217:13–218:3	Unrelated to designation; 403 (wasting time, undue delay)	

220:23– 221:18	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	221:19–222:18	403 (wasting time, undue delay)  222:19–223:4	222:19–223:4 – <b>Foundation; Question Assumes Facts Not in Evidence</b>
229:19– 230:7				
233:17– 234:9	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	230:24–233:8   234:10–19  248:18–251:15  284:14–285:2 285:3–25 286:12–286:20	None for 230:24– 231:22  231:23–233:8: 403 (undue delay, wasting time)  403 (misleading the jury); 602 (speculation)  Unrelated to designation; 403 (wasting time, undue delay)  611c  611c; AS  611c	
235:6–25				
237:22– 239:3	<b>Rule 401, Relevance</b> –unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	237:8–21  284:14–285:2	None  611c	

		286:12—286:20	611c	
252:9-20	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	252:21–253:5	None	
253:6–254:4	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	252:21–253:5  254:5–22	None  403 (misleading the jury); 602 (speculation)  254:23–256:3	
259:9–18	<b>Rule 401, Relevance</b> –unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	257:23–259:8  259:19–260:8	403 (misleading the jury); 602 (speculation); A  403 (undue delay, wasting time); NR	Rule 401, Relevance – Coppola’s testimony concerning what Loehde said is not probative; <b>Rule 602, Personal Knowledge; Rule 701, Speculation</b>
262:24–263:20	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	261:10–262:23  263:21–19	602 (speculation)  Improper designation	
277:16–278:1	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	278:2–281:13	None for 279:7–280:22  403 (cumulative); 611c; AS	
282:3–20	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	282:21–285:25	611c; AS	

**May 12, 2022 – Thomas Ulry:**

Designation	XOOM’s Objections	XOOM’s Counterdesignations	Plaintiff’s Objections / Further
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			<b>Designations for Completeness</b>
14:23–15:23			
29:3–18	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	29:19-30:4	None
30:5–21	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	29:19-30:4 30:22-32:4	None None
32:20–33:2	<b>Foundation; Assumes Facts Not in Evidence</b>	31:3–32:4	None
35:7–19	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	35:20-37:2	402 (relevance – unrelated to NY rate setting)
42:9–43:1	<b>Rule 401, Relevance</b> - unrelated to contract at issue; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Best Evidence Rule.</b>		
44:3–47:12	<b>Rule 401, Relevance</b> - unrelated to contract at issue; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Best Evidence Rule.</b>		
52:20–53:7	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	31:3–32:4	None
58:10–59:2	XOOM incorporates its objections to the underlying exhibit		
59:16–62:1	<b>Rule 401, Relevance</b> – sales partner focused on acquisition, meaning fixed and introductory rates, not variable rates; <b>Rule 403, Probative Value</b> - misleading, prejudicial; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 801, Hearsay</b>	59:3–15 62:2–14	402 (relevance – unrelated to NY rate setting); 403 (undue delay, wasting time) None
62:15–63:4	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	63:5-23	None
63:24–64:3			
65:1–67:6	<b>Rule 602, Personal Knowledge; Rule 701, Speculation</b>	67:7-12	None

67:13–69:17	67:13–20: <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 401, Relevance</b> – Ulry’s testimony that he does not know what a range in a document means is not relevant  69:4–17: <b>Rule 602, Personal Knowledge; Rule 701, Speculation</b>	67:7-12	None
69:19–70:2	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	31:3–32:4  70:3–16	None  None
74:17–75:6	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	75:17-77:20    78:11-81:10	Unrelated to designation; 403 (wasting time, undue delay)    Unrelated to designation; 403 (wasting time, undue delay)
86:4–88:9	<b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 403, Probative Value</b> - prejudicial, misleading, ambiguous, compound questions; <b>Rule 401, Relevance</b> –unrelated to variable rate-setting	85:7–86:3	602 (speculation)
91:4–20	XOOM incorporates its objections to the underlying exhibit		
92:23–94:1	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading	106:6–107:2	Unrelated to designation; 402 (relevance – unrelated to rate setting); 403 (wasting time, undue delay)
94:2–20	<b>Rule 602, Personal Knowledge; Rule 701, Speculation</b>		

**June 24, 2022 – Troy Chidester:**

<b>Designation</b>	<b>XOOM's Objections</b>	<b>XOOM's Counterdesignations</b>	<b>Plaintiff's Objections / Further Designations for Completeness</b>
15:14–16:5	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	16:6–22  36:14–22	None  None
17:9–18:2	<b>Assumes facts not in evidence; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	18:3–19:25	None
21:4–16	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	21:17–18	None
48:19–49:19	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context  49:15–19: <b>Rule 602, Personal Knowledge; Rule 701, Speculation</b>	49:20–50:2	None
50:3–10	<b>Rule 602, Personal Knowledge; Rule 701, Speculation</b>		
64:2–16	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	66:11–67:11  70:7–17	None  None
68:17–24	<b>Rule 401, Relevance</b> –fixed-rate data subject to MIL, unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	68:25–69:6	None

69:7–17	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading	66:11–67:11 18:13-19:25	None None
93:21–94:15			
99:8–14	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading	66:11–67:11 18:13-19:25	None None
104:13–20	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading	66:11–67:11 18:13-19:25	None None
129:3–20			
133:6–134:19	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading  Objection to 134:9-15: <b>Best Evidence Rule.</b>		
135:20–136:11	<b>Rule 401, Relevance</b>		
137:18–138:8	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Best Evidence Rule.</b>		

**June 29, 2022 – Patricia Kulesa:**

<b>Designation</b>	<b>XOOM’s Objections</b>	<b>XOOM’s Counterdesignations</b>	<b>Plaintiff’s Objections / Further Designations for Completeness</b>
39:20–41:8	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	38:17-39:19 41:9–43:12	None None
100:4–11	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting or contract at issue; <b>Rule 32(a)(6),</b>	99:19-100:3	None

	<b>Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context		
102:5–9	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting or contract at issue; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	101:9–102:4 102:10–22	None None

**July 22, 2022 – Ryan Park:**

<b>Designation</b>	<b>XOOM’s Objections</b>	<b>XOOM’s Counterdesignations</b>	<b>Plaintiff’s Objections / Further Designations for Completeness</b>
29:15–30:6	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	30:7–32:19	None
32:20–35:23	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	30:7-32:19 35:24-36:16	None None
36:17–37:16	<b>Rule 403, Probative Value</b> - prejudicial, misleading, ambiguous; <b>Foundation; Assumes Facts Not in Evidence.</b>	35:24-36:16	None
41:10–17	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	40:3-41:9	None
43:20–45:11	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	45:12-46:22	None
46:23–48:3	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	45:12-46:22	None
75:20–76:4	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	76:9–22	None
90:13–91:11	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	91:12-92:11	None
94:15–95:3			

98:10–15	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	98:6–9;  98:16–99:19  100:23–107:7  107:16–110:14	None  None  Unrelated to designation; 403 (wasting time, undue delay)  Unrelated to designation; 403 (wasting time, undue delay)
99:20–100:22	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	98:6–9;  98:16–99:19  100:23–107:7  107:16–110:14	None  402 (relevance – unrelated to Class rates); 403 (wasting time, undue delay)  Unrelated to designation; 403 (wasting time, undue delay)  Unrelated to designation; 403 (wasting time, undue delay)
107:8–15	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	98:6–9;  98:16–99:19	None  402 (relevance – unrelated to Class

		100:23–107:7  107:16–110:14	rates); 403 (wasting time, undue delay)  Unrelated to designation; 403 (wasting time, undue delay)  Unrelated to designation; 403 (wasting time, undue delay)
145:25–146:16	XOOM incorporates its objections to the underlying exhibit		
149:5–18	<b>Rule 401, Relevance</b> – fixed-rate margins have no bearing on this case; <b>Rule 403, Probative Value</b> – misleading, prejudicial	149:19–153:3	602 (speculation)
190:14–191:4			
197:19–198:25	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	196:13–197:18  199:1–200:7	None  402 (relevance – unrelated to rate setting); 403 (wasting time, undue delay, misleading the jury); 602 (speculation)
211:24–212:24	212:15–24: <b>Rule 401, Relevance</b> – unrelated to variable-rate setting; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	212:25–214:11	None
217:7–17			
220:8–12	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	219:25–220:11	None

**July 27 2022 – Jason Loehde:**

<b>Designation</b>	<b>XOOM's Objections</b>	<b>XOOM's Counterdesignations</b>	<b>Plaintiff's Objections / Further Designations for Completeness</b>
39:25–41:15	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	38:7–39:3 39:19–24	None None
46:14–48:25	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	46:3–13 49:1–25	None None
51:4–52:10	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	50:14–51:3 52:11–53:20	None None
53:21–54:11	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	52:11–53:20 54:12–22	None None
56:7–16	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	55:10–56:6 56:17–58:12	None None
59:11–61:19	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	61:20–63:22	None
63:23–64:5	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	61:20–63:22 64:6–65:23	None None
65:24–66:10	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	64:6–65:23 66:11–67:8	None None
67:9–16	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	66:11–67:8 67:17–22	None None



67:23–68:10	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	67:17–22	None
		68:11–72:6	None
148:22–149:15	<b>Rule 401, Relevance</b> – whether Loehde reviewed the document in preparation for deposition is irrelevant; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule</b>		
152:19–154:17	152:19–23: <b>Rule 401, Relevance</b> – the testimony by the attorney concerning the email is not admissible and is irrelevant; Rule 403, Probative Value; Best Evidence Rule		
165:9–167:18	<b>Rule 401, Relevance</b> – Loehde’s speculation concerning the meaning of Park’s comments is not relevant; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule</b>		
180:11–19			
181:20–182:1	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	181:3–19	None
189:8–15			
195:12–196:4	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	194:13–195:11	None
200:3–12	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value; Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	75:9–23  198:3–199:1	Unrelated to designation; 403 (undue delay, wasting time)  403 (cumulative); NR (deponent does not answer the question asked)
200:23–201:7	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value; XOOM</b> incorporates its objections to the underlying exhibit		

209:2–211:8	<b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	211:9–15	None
211:16–212:4	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	211:9–15 212:5–22	None None
212:23–213:22	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	212:5–22 213:23–214:25	None None
215:12–218:14	<b>Foundation; Assumes Facts Not in Evidence; Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	213:23–214:25 218:15–219:4	None None
219:5–22	<b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	218:15–219:4 219:23–220:12	None 403 (cumulative; confusing the issues)
221:13–23	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	220:14–221:12 221:24–224:5	None 403 (confusing the issues, wasting time, undue delay)
226:2–227:11	<b>Rule 401, Relevance</b> – whether Loehde was or considered himself part of the management team is irrelevant; <b>Rule 403, Probative Value</b> – prejudicial, misleading;		
227:20–228:4	XOOM incorporates its objections to the underlying exhibit		
230:14–231:1	<b>Foundation; Assumes Facts Not in Evidence; Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	230:10-13	None

233:15–234:2	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	234:3–25	None
235:2–18	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	234:3–25	None
235:19–236:17	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	236:18–237:23	403 (cumulative, wasting time, undue delay)
241:19–242:4			
247:11–250:11	<b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	245:5–247:10	Unrelated to designation; 403 (wasting time, undue delay)
251:6–22			
255:13–23			
256:7–257:10	<b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	257:11–259:1	None
266:15–24			
268:11–269:22	<b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule</b>		
278:21–279:6			
279:7–281:12	<b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule</b>		
287:25–291:5	<b>Foundation; Assumes Facts Not in Evidence; Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule</b>		
296:7–22	<b>Foundation; Assumes Facts Not in Evidence; Rule 401, Relevance; Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule</b>		

299:2–9			
299:16–301:23	<b>Foundation; Assumes Facts Not in Evidence; Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Best Evidence Rule</b>		

**July 28, 2022 – Rule 30(b)(6) (Jason Loehde):**

<b>Designation</b>	<b>XOOM’s Objections</b>	<b>XOOM’s Counterdesignations</b>	<b>Plaintiff’s Objections / Further Designations for Completeness</b>
17:3–18:7	<b>Foundation; Assumes Facts Not in Evidence; Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	18:8–22	
18:23–19:6	<b>Rule 401, Relevance</b> - unrelated to contract at issue; <b>Rule 403, Probative Value</b> - prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	18:8–22	
20:5–10	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	20:11–20	None
26:10–28:11			

31:9–32:7	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	32:8–39:25  49:23–52:4  79:9–80:14	Unrelated to designation; 403 (wasting time, undue delay)  Unrelated to designation; 403 (cumulative, wasting time, undue delay)  None
66:3–6		65:2–66:2	None
81:11–12			
85:11–87:13	<b>Best Evidence Rule; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	83:10–85:10	None
91:5–92:8	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	90:1–91:4	None
126:16–127:1	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	127:2–18	None
127:24–131:24	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting and contract at issue; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Best Evidence Rule</b>		
132:6–136:8	<b>Rule 401, Relevance</b> –unrelated to contract at issue; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Best Evidence Rule</b> ; XOOM also incorporates its objections to the underlying exhibit		
138:13–22	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Best Evidence Rule; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	137:13–138:3	None

141:5–142:3	<b>Rule 401, Relevance</b> – other contract terms, and even their existence, is irrelevant; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Best Evidence Rule</b>		
202:17–203:8			
217:25–218:7	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	218:8–16	None
218:17–219:6	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	218:8–16	None
221:14–222:16			
247:5–11			
248:17–24	<b>Rule 401, Relevance</b> – unrelated to variable rate-setting		
264:6–18	<b>Foundation; Assumes Facts Not in Evidence; Rule 403, Probative Value</b> – Prejudicial, Misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	264:19–265:13 284:3–22	None None
266:2–9			
267:8–268:18	<b>Foundation; Assumes Facts Not in Evidence; Rule 403, Probative Value</b> – Prejudicial, Misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	267:1–7 268:19–269:7	None None
278:22–279:12	<b>Rule 401, Relevance</b> – XOOM’s overall gross margins in relation to gross margin targets is irrelevant to contract claim; <b>Rule 403, Probative Value</b> – prejudicial, misleading;	276:24–278:21	276:24–278:8: 402 (relevance – unrelated to NY rate setting); 403 (wasting time, undue delay)  278:9–20: None

279:25–280:17	<b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	280:18-281:14	403 (wasting time, undue delay, misleading the jury)
285:15–24			
288:25–289:8	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	288:12–24 289:9–290:12	None 611c; AS

**November 22, 2022 – David Coleman:**

<b>Designation</b>	<b>XOOM’s Objections</b>	<b>XOOM’s Counterdesignations</b>	<b>Plaintiff’s Objections / Further Designations for Completeness</b>
9:21–10:11	<b>Rule 401, Relevance</b> – when and how expert was retained does not affect credibility or any issue in the case; <b>Rule 403, Probative Value</b> – prejudicial, misleading		
18:6–19:4	<b>Rule 401, Relevance</b> – PSC information subject to MIL; <b>Rule 403, Probative Value</b> – prejudicial, misleading; XOOM also incorporates its objections to the underlying exhibit		
19:10–20:20	<b>Rule 401, Relevance</b> – PSC information subject to MIL; <b>Rule 403, Probative Value</b> – prejudicial, misleading; XOOM also incorporates its objections to the underlying exhibit	19:5-9	None

24:20–25:3	<b>Rule 401, Relevance</b> – expert’s opinion concerning contract interpretation is not pertinent; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 702, Expertise</b> – outside the scope of opinion and expertise; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	24:6–19  56:4–21	None  Unrelated to designation; 402 (relevance – related to legal issue, not factual); 403 (wasting time, undue delay)
27:16–29:12	<b>Rule 401, Relevance</b> – expert’s opinion concerning lay person’s understanding of contract terms is not pertinent; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 702, Expertise</b> – outside the scope of opinion and expertise; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	27:2–15  56:4–21	403 (confusing the issues, misleading the jury); NR  Unrelated to designation; 402 (relevance – related to legal issue, not factual); 403 (wasting time, undue delay)
31:24–32:8	<b>Rule 401, Relevance</b> – expert’s opinion concerning lay person’s understanding of contract terms is not pertinent; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 702, Expertise</b> – outside the scope of opinion and expertise; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	32:9–24  56:4–21	None  Unrelated to designation; 402 (relevance – related to legal issue, not factual); 403 (wasting time, undue delay)
33:16–21	<b>Foundation; Assumes Facts Not in Evidence; Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 702, Expertise</b> - outside the scope of opinions and expertise; <b>Rule 401, Relevance</b> - expert’s opinion Plaintiff’s experts’ understanding of contract terms is not pertinent; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete;</b>	33:22	Unnecessary



	<b>Rule 403, Misleading</b> – danger of misleading the jury without context		
35:6–17	<b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	34:8 –35:5  35:18 – 36:20	None for 34:22–35:5  34:8–21: NR  402 (relevance – not related to supply costs); 403 (confusing the issues, misleading the jury); NR
36:23–37:18	<b>Rule 401, Relevance</b> – Model One has been abandoned; <b>Rule 403, Probative Value</b> – prejudicial, misleading		
38:4–16	<b>Rule 401, Relevance</b> – Model One has been abandoned; <b>Vague Question; Rule 403, Probative Value</b> – prejudicial, misleading		
40:16–20	<b>Rule 401 – Relevance</b> – whether ESCOS provided lower rates than utilities is irrelevant to contract claim; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	39:23–15	None
42:5–11	<b>Rule 401 – Relevance</b> – whether ESCOS provided lower rates than utilities is irrelevant to contract claim; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	41:17–42:4	None
42:12–43:4	<b>Rule 401 – Relevance</b> – whether ESCOS provided lower rates than utilities is irrelevant to contract claim; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403,</b>	43:5–15	402 (relevance – witness admits he doesn’t want to speculate on motives

	<b>Misleading</b> – danger of misleading the jury without context		of the Mirkins); 602 (speculation); NR
50:3–51:22	<b>Rule 401 – Relevance</b> – expert’s opinion concerning contract interpretation is not pertinent; <b>Rule 403, Probative Value</b> – prejudicial, misleading, wasteful; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 702, Expertise</b> - meaning of contractual language is outside the scope of opinions and expertise; <b>Argumentative questions; Best Evidence Rule; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	56:4–21	Unrelated to designation; 402 (relevance – related to legal issue, not factual); 403 (wasting time, undue delay)
54:11–21	<b>Rule 401, Relevance</b> – expert’s opinion concerning what factors XOOM considered in setting rates is not relevant; <b>Rule 403, Probative Value</b> – prejudicial, misleading, cumulative, wasteful; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 702, Expertise</b> – outside the scope of opinion and expertise; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	54:22–55:7	None to 54:22–55:2  55:3–55:7: 403 (wasting time, undue delay)
55:8–17	<b>Rule 401, Relevance</b> – expert’s opinion concerning what factors XOOM considered in setting rates is not relevant; <b>Rule 403, Probative Value</b> – prejudicial, misleading, cumulative, wasteful		
55:18–56:3	<b>Rule 401, Relevance</b> – expert’s opinion concerning what factors XOOM considered in setting rates is not relevant; <b>Rule 403, Probative Value</b> – prejudicial, misleading, cumulative		
58:1–7	<b>Rule 401, Relevance</b> – unrelated to contract at issue; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 702, Expertise</b> – outside the	56:4–21	Unrelated to designation; 402 (relevance – related to legal issue, not

	scope of opinion and expertise; <b>Best Evidence Rule; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context		factual); 403 (wasting time, undue delay)
60:5–62:8	<b>Rule 401, Relevance</b> – expert’s opinion concerning contract interpretation is not pertinent; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 702, Expertise</b> – outside the scope of opinion and expertise; <b>Best Evidence Rule; Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	56:4–21	Unrelated to designation; 402 (relevance – related to legal issue, not factual); 403 (wasting time, undue delay)
66:11–15	<b>Rule 401, Relevance</b> – expert’s opinion concerning what factors XOOM considered in setting rates is not relevant; <b>Rule 403, Probative Value</b> – prejudicial, misleading; cumulative, wasteful; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 702, Expertise</b> – outside the scope of opinion and expertise	56:4–21	Unrelated to designation; 402 (relevance – related to legal issue, not factual); 403 (wasting time, undue delay)
72:1–19	<b>Rule 401, Relevance</b> - unrelated to variable rate-setting; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	72:20–73:24	403 (cumulative of designation, wasting time, undue delay)
75:3–7	<b>Rule 403, Probative Value</b> – prejudicial, misleading, compound question		
80:18–81:1	<b>Rule 401, Relevance</b> – PSC information subject to MIL, whether ESCOS provided lower rates than utilities is irrelevant to contract claim; <b>Rule 403, Probative Value</b> – prejudicial, misleading		
85:9–12	<b>Rule 401, Relevance</b> – speculation concerning a rate that undisputedly was not applied is not pertinent; <b>Rule 403, Probative Value</b> – prejudicial, misleading		

86:1–11	<b>Rule 401, Relevance</b> – whether expert had access to other ESCOs’ margin information is irrelevant; <b>Rule 403, Probative Value</b> – prejudicial, misleading		
88:4–7	<b>Rule 401, Relevance; Rule 403, Probative Value</b> – prejudicial, misleading		
88:13–89:1	<b>Rule 401, Relevance; Rule 403, Probative Value</b> – prejudicial, misleading		
90:3–7	<b>Rule 401, Relevance</b> – whether fixed-rate products were profitable is irrelevant to case concerning variable rates; <b>Rule 403, Probative Value</b> – prejudicial, misleading		
91:18–92:22	<b>Rule 401, Relevance</b> – Model One has been abandoned; <b>Rule 403, Probative Value</b> – prejudicial, misleading		
95:17–96:4	<b>Rule 401, Relevance</b> – the fact that XOOM did not ask the expert to calculate prior period adjustments does not bear on whether XOOM based its rates on actual costs; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	97:22–98:7	None
98:12–99:12	<b>Rule 401, Relevance</b> – not relevant to the contract as interpreted by the Court on summary judgment; <b>Rule 403, Probative Value</b> – prejudicial, misleading; <b>Rule 32(a)(6), Incomplete; Rule 403, Misleading</b> – danger of misleading the jury without context	99:13–21	402 (relevance – different contract interpretation than found at summary judgment; NR
101:11–18	<b>Rule 401, Relevance</b> – the amount XOOM has paid its expert does not bear on the case or his credibility; <b>Rule 403, Probative Value</b> – prejudicial, misleading		
106:12–107:18	106:12–107:12: <b>Rule 401, Relevance</b> -- XOOM’s written responses to document requests not relevant to merits; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 702, Expertise</b> –		

	outside the scope of opinion and expertise; <b>Rule 403, Probative Value</b> – prejudicial, misleading		
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**Thomas Ulry, Todd v. XOOM Energy, LLC, 3/20/2019 (produced at XOOM INIT 000305)**

<b>Designation</b>	<b>Defendants' Objections</b>	<b>XOOM's Counterdesignations</b>	<b>Plaintiff's Objections / Further Designations for Completeness</b>
101:10–22	<b>Rule 401, Relevance</b> - deposition testimony concerning rate-setting in totally different state, under contract with different pricing terms, has no bearing here; <b>Rule 403, Probative Value</b> – misleading, prejudicial; <b>Rule 602, Personal Knowledge; Rule 701, Speculation; Rule 32(a)(8), Deposition from Earlier Action</b> – deposition from earlier action not involving the same subject matter or the same parties cannot be introduced	108:9–20	Unrelated to designation; 403 (wasting time, undue delay)

XOOM's objections, responses, and counterdesignations (like all pretrial exchanges) are subject to XOOM's forthcoming *in limine* motions and XOOM's objections and responses to Plaintiff's proposed exhibits.

XOOM reserves the right to introduce any deposition excerpt on Plaintiff's list. XOOM further reserves the right to amend and update its objections and counterdesignations until trial.

XOOM serves these objections, responses, and counterdesignations subject to its general objections, including its objection to the disclosure of any non-relevant confidential and trade-secret information, whether within the deposition testimony designated by either party or in any exhibit referenced therein. XOOM anticipates redacting such non-relevant confidential and trade-secret information from all trial exhibits following the Court's rulings on XOOM's motions *in limine*. XOOM further objects to the use of deposition testimony from any witness who is available for trial, other than for the purpose of impeachment. *See* Fed. R. Evid. 32(a)(4). XOOM further incorporates by reference to these objections all objections it makes to the exhibits being discussed or referenced in Plaintiff's deposition designations.